

ESTTA Tracking number: **ESTTA526515**

Filing date: **03/13/2013**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Petition for Cancellation

Notice is hereby given that the following party requests to cancel indicated registration.

Petitioner Information

Name	Mophie, Inc.		
Entity	Corporation	Citizenship	California
Address	2850 Red Hill Avenue, Suite 128 Santa Ana, CA 92705 UNITED STATES		
Attorney information	Michelle H. Donovan Duane Morris LLP 750 B Street, Suite 2900 San Diego, CA 92101 UNITED STATES mhdonovan@duanemorris.com, meschulte@duanemorris.com Phone:619.744.2219		

Registration Subject to Cancellation

Registration No	4095384	Registration date	02/07/2012
Registrant	Simply Mac, Inc. 2558 Wilmington Ave 3939 S Wasatch Dr., suite 1 Salt Lake City, UT 84124 UNITED STATES		

Goods/Services Subject to Cancellation

Class 009. First Use: 2010/09/24 First Use In Commerce: 2010/09/24 All goods and services in the class are cancelled, namely: Battery and battery charger for use with portable electronic devices, namely, music players, video players, smartphones, tablet computers, and notebook computers
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Grounds for Cancellation

Priority and likelihood of confusion	Trademark Act section 2(d)
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Marks Cited by Petitioner as Basis for Cancellation

U.S. Registration No.	4286345	Application Date	09/12/2012
Registration Date	02/05/2013	Foreign Priority Date	NONE
Word Mark	JUICE PACK		

Design Mark	JUICE PACK
Description of Mark	NONE
Goods/Services	Class 009. First use: First Use: 2009/04/22 First Use In Commerce: 2009/04/22 Rechargeable batteries integrated into a protective case or housing with an electrical connector for use with mobile electronic devices, namely mobile phones, digital audio and video players, handheld computers, personal digital assistants, electronic organizers, electronic notepads, and cameras; rechargeable batteries for use with mobile electronic devices, namely mobile phones, digital audio and video players, handheld computers, personal digital assistants, electronic organizers, electronic notepads, and cameras; battery chargers

U.S. Registration No.	4286346	Application Date	09/12/2012
Registration Date	02/05/2013	Foreign Priority Date	NONE
Word Mark	JUICE PACK AIR		
Design Mark	JUICE PACK AIR		
Description of Mark	NONE		
Goods/Services	Class 009. First use: First Use: 2009/04/21 First Use In Commerce: 2009/04/21 Rechargeable batteries integrated into a protective case or housing with an electrical connector for use with mobile electronic devices, namely mobile phones, digital audio and video players, handheld computers, personal digital assistants, electronic organizers, electronic notepads, and cameras; battery chargers		

U.S. Registration No.	4065937	Application Date	11/17/2010
Registration Date	12/06/2011	Foreign Priority Date	NONE
Word Mark	MOPHIE JUICE PACK		

Design Mark	MOPHIE JUICE PACK
Description of Mark	NONE
Goods/Services	Class 009. First use: First Use: 2009/04/22 First Use In Commerce: 2009/04/22 Rechargeable batteries integrated into a protective case or housing with an electrical connector for use with mobile electronic devices, namely mobile phones, digital audio and video players, handheld computers, personal digital assistants, electronic organizers, electronic notepads, and cameras; rechargeable batteries for use with mobile electronic devices, namely mobile phones, digital audio and video players, handheld computers, personal digital assistants, electronic organizers, electronic notepads, and cameras; battery chargers

U.S. Registration No.	4065710	Application Date	10/04/2010
Registration Date	12/06/2011	Foreign Priority Date	NONE
Word Mark	MOPHIE JUICE PACK AIR		
Design Mark	MOPHIE JUICE PACK AIR		
Description of Mark	NONE		
Goods/Services	Class 009. First use: First Use: 2009/04/21 First Use In Commerce: 2009/04/21 Rechargeable batteries integrated into a protective case or housing with an electrical connector for use with mobile electronic devices, namely mobile phones, digital audio and video players, handheld computers, personal digital assistants, electronic organizers, electronic notepads, and cameras; battery chargers		

U.S. Registration No.	4065713	Application Date	10/04/2010
Registration Date	12/06/2011	Foreign Priority Date	NONE
Word Mark	MOPHIE JUICE PACK RESERVE		

Design Mark	MOPHIE JUICE PACK RESERVE
Description of Mark	NONE
Goods/Services	Class 009. First use: First Use: 2010/06/23 First Use In Commerce: 2010/06/23 Rechargeable batteries for use with mobile electronic devices, namely mobile phones, digital audio and video players, handheld computers, personal digital assistants, electronic organizers, electronic notepads, and cameras; battery chargers

U.S. Registration No.	4065712	Application Date	10/04/2010
Registration Date	12/06/2011	Foreign Priority Date	NONE
Word Mark	MOPHIE JUICE PACK BOOST		
Design Mark	MOPHIE JUICE PACK BOOST		
Description of Mark	NONE		
Goods/Services	Class 009. First use: First Use: 2010/08/04 First Use In Commerce: 2010/08/04 Rechargeable batteries for use with mobile electronic devices, namely mobile phones, digital audio and video players, handheld computers, personal digital assistants, electronic organizers, electronic notepads, and cameras; battery chargers		

U.S. Registration No.	4065711	Application Date	10/04/2010
Registration Date	12/06/2011	Foreign Priority Date	NONE
Word Mark	MOPHIE JUICE PACK POWERSTATION		

Design Mark	MOPHIE JUICE PACK POWERSTATION
Description of Mark	NONE
Goods/Services	Class 009. First use: First Use: 2010/09/13 First Use In Commerce: 2010/09/13 Rechargeable batteries for use with mobile electronic devices, namely mobile phones, digital audio and video players, handheld computers, personal digital assistants, electronic organizers, electronic notepads, and cameras; battery chargers

U.S. Application No.	85726663	Application Date	09/12/2012
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	JUICE PACK POWERSTATION		
Design Mark	JUICE PACK POWERSTATION		
Description of Mark	NONE		
Goods/Services	Class 009. First use: First Use: 2010/09/13 First Use In Commerce: 2010/09/13 Rechargeable batteries integrated into a protective case or housing with an electrical connector for use with mobile electronic devices, namely mobile phones, digital audio and video players, handheld computers, personal digital assistants, electronic organizers, electronic notepads, and cameras; battery chargers		

Attachments	85726645#TMSN.jpeg (1 page)(bytes) 85726652#TMSN.jpeg (1 page)(bytes) 85179481#TMSN.jpeg (1 page)(bytes) 85144833#TMSN.jpeg (1 page)(bytes) 85144836#TMSN.jpeg (1 page)(bytes) 85144835#TMSN.jpeg (1 page)(bytes) 85144834#TMSN.jpeg (1 page)(bytes) 85726663#TMSN.jpeg (1 page)(bytes) SIMPLY MAC Petition to Cancel.pdf (7 pages)(112664 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Michelle Hon Donovan/
Name	Michelle H. Donovan
Date	03/13/2013

In the matter of Trademark Registration No. 4095384
Registered: February 07, 2012
For the Mark: JUICEBOX

Cancellation No. _____

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I. FACTUAL BACKGROUND

A. Petitioner's Business and Marks.

1. Petitioner is a leading developer and manufacturer of rechargeable batteries and battery chargers for use with mobile electronic devices, namely mobile phones, digital audio and video players, handheld computers, personal digital assistants, electronic organizers, electronic notepads, and cameras ("JUICE PACK Products").

2. Petitioner sells its JUICE PACK Products under a family of "Juice Pack" marks including but not limited to the following trademarks: JUICE PACK, JUICE PACK AIR, JUICE PACK POWERSTATION, MOPHIE JUICE PACK, MOPHIE JUICE PACK AIR, MOPHIE JUICE PACK RESERVE, MOPHIE JUICE PACK BOOST, AND MOPHIE JUICE PACK POWERSTATION (collectively "JUICE PACK Marks").

3. Petitioner owns U.S. Registration Number 4286345 for JUICE PACK, registered for "Rechargeable batteries integrated into a protective case or housing with an electrical connector for use with mobile electronic devices, namely mobile phones, digital audio and video players, handheld computers, personal digital assistants, electronic organizers, electronic notepads, and cameras; rechargeable batteries for use with mobile electronic devices, namely mobile phones, digital audio and video players, handheld computers, personal digital assistants, electronic organizers, electronic notepads, and cameras; battery chargers" in Class 009 on February 5, 2013.

4. Petitioner first used its JUICE PACK mark in commerce at least as early as April 22, 2009.

5. Petitioner owns U.S. Registration Number 4286346 for JUICE PACK AIR, registered for "Rechargeable batteries integrated into a protective case or housing with an electrical connector for use with mobile electronic devices, namely mobile phones, digital audio

and video players, handheld computers, personal digital assistants, electronic organizers, electronic notepads, and cameras; battery chargers” in Class 009 on February 5, 2013.

6. Petitioner first used its JUICE PACK AIR mark in commerce at least as early as April 21, 2009.

7. Petitioner owns U.S. Registration Number 4065937 for MOPHIE JUICE PACK, registered for “Rechargeable batteries integrated into a protective case or housing with an electrical connector for use with mobile electronic devices, namely mobile phones, digital audio and video players, handheld computers, personal digital assistants, electronic organizers, electronic notepads, and cameras; rechargeable batteries for use with mobile electronic devices, namely mobile phones, digital audio and video players, handheld computers, personal digital assistants, electronic organizers, electronic notepads, and cameras; battery chargers” in Class 009 on December 06, 2011.

8. Petitioner first used its MOPHIE JUICE PACK mark in commerce at least as early as April 22, 2009.

9. Petitioner owns U.S. Registration Number 4065710 for MOPHIE JUICE PACK AIR, registered for “ Rechargeable batteries integrated into a protective case or housing with an electrical connector for use with mobile electronic devices, namely mobile phones, digital audio and video players, handheld computers, personal digital assistants, electronic organizers, electronic notepads, and cameras; battery chargers” in Class 009 on December 06, 2011.

10. Petitioner first used its MOPHIE JUICE PACK AIR mark in commerce at least as early as April 21, 2009.

11. Petitioner owns U.S. Registration Number 4065713 for MOPHIE JUICE PACK RESERVE, registered for “Rechargeable batteries for use with mobile electronic devices,

namely mobile phones, digital audio and video players, handheld computers, personal digital assistants, electronic organizers, electronic notepads, and cameras; battery chargers” in Class 009 on December 06, 2011.

12. Petitioner first used its MOPHIE JUICE PACK RESERVE mark in commerce at least as early as June 23, 2010.

13. Petitioner owns U.S. Registration Number 4065712 for MOPHIE JUICE PACK BOOST, registered for “Rechargeable batteries for use with mobile electronic devices, namely mobile phones, digital audio and video players, handheld computers, personal digital assistants, electronic organizers, electronic notepads, and cameras; battery chargers” in Class 009 on December 06, 2011.

14. Petitioner first used its MOPHIE JUICE PACK BOOST mark in commerce at least as early as August 4, 2010.

15. Petitioner owns U.S. Registration Number 4065711 for MOPHIE JUICE PACK POWERSTATION, registered for “Rechargeable batteries integrated into a protective case or housing with an electrical connector for use with mobile electronic devices, namely mobile phones, digital audio and video players, handheld computers, personal digital assistants, electronic organizers, electronic notepads, and cameras; battery chargers” in Class 009 on December 06, 2011.

16. Petitioner first used its MOPHIE JUICE PACK POWERSTATION mark in commerce at least as early as September 13, 2010.

17. Petitioner owns U.S. Application Serial Number 85/726,663 for JUICE PACK POWERSTATION, for “Rechargeable batteries integrated into a protective case or housing with an electrical connector for use with mobile electronic devices, namely mobile phones, digital

audio and video players, handheld computers, personal digital assistants, electronic organizers, electronic notepads, and cameras; battery chargers” in Class 009.

18. Petitioner first used its JUICE PACK POWERSTATION mark in commerce at least as early as September 13, 2010.

19. Petitioner has engaged in extensive advertising and promotion of its JUICE PACK Marks in connection with its JUICE PACK Goods, including its battery chargers and as a result the JUICE PACK Marks have become identified and are widely recognized as representing the goods and services of Petitioner among the relevant trade and consumers.

B. Registrant’s Later Adopted Mark and Registration.

20. Upon information and belief, registrant Simply Mac, Inc., (hereinafter “Registrant”), is a Utah corporation having its place of business at 3939 S Wasatch Blvd., Salt Lake City, UT 84124.

21. Upon information and belief, Registrant is engaged in the business of developing, manufacturing, marketing, and selling battery chargers for mobile electronic devices, namely, music players, video players, smartphones, tablet computers, and notebook computers.

22. On September 12, 2012, Registrant obtained a registration on the Principal Register for JUICEBOX (“Registrant’s Mark”) for “Battery and battery charger for use with portable electronic devices, namely, music players, video players, smartphones, tablet computers, and notebook computers” (hereinafter the “Registrant’s Goods”) in International Class 9.

23. In its application for registration, Registrant alleged that the date of first use of its mark was September 24, 2010, which is after the first use dates of the JUICE PACK Marks.

II. The Registration Should Be Cancelled Because it will Cause Consumer Confusion with Petitioner's Registered Trademarks.

24. Registrant's Mark is similar in sight, sound, meaning and overall commercial impression to the JUICE PACK Marks.

25. Registrant's Mark and Petitioner's JUICE PACK Marks identify highly similar or identical goods that are offered to the same class of consumers through the same channels of trade.

26. Petitioner's first use of its JUICE PACK Marks predates Registrant's first use of its JUICEBOX mark.

27. Registrant's Mark so resembles Petitioner's JUICE PACK Marks, when used in association with the goods claimed in International Class 009, that such use is likely to cause confusion or to cause mistake, or to deceive within the meaning of Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d).

28. Therefore, Petitioner has been and will continue to be harmed as a result of the existence of U.S. Trademark Registration No. 4095384.

WHEREFORE, Petitioner believes it has been and will continue to be harmed by the ongoing registration of Registrant's Mark, and Petitioner requests that its petition be granted and U.S. Trademark Registration No. 4095384 be canceled.

Respectfully submitted,

MOPHIE, INC.

Date: March 13, 2013

By: /Michelle Hon Donovan/
Michelle Hon Donovan
Attorney for Petitioner
DUANE MORRIS LLP
750 B Street, Suite 2900
San Diego, CA 92101
Tel.: (619) 744-2200
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Certificate of Service

The undersigned hereby certifies that a true and correct copy of the foregoing Petition to Cancel is being deposited with the United States Postal Service, with sufficient postage as first class mail in an envelope address to Applicant at:

Eric Westerberg
Simply Mac
3939 S Wasatch Blvd.
Salt Lake City, UTAH 84124

On March 13, 2013

_____/Michelle Hon Donovan/_____

Certificate of Electronic Filing

The undersigned hereby certifies that the original of the Petition to Cancel was filed with the Trademark Trial and Appeal Board by electronic filing through the Electronic System for the Trademark Trial and Appeals at <http://estta.uspto.gov> on the date indicated below.

On March 13, 2013

_____/Michelle Hon Donovan/_____
